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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 742

STATE OF MARYLAND, ET AL., *Appellants*

vs.

W. WILLARD WIRTZ, SECRETARY OF LABOR ET AL., *Appellees*

On Appeal From the United States District Court for the District of Maryland

Brief on Behalf of The Fort Worth Independent School District

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TO SAID HONORABLE COURT:

The rules of this Court for perfecting an appeal from a decision of a Three Judge Federal Court have been complied with by the Attorney Generals of Maryland and Texas, who represent all Appellants in this case.

Upon Motion and Order the Trial Court allowed the Fort Worth Independent School District of Fort Worth, Texas, to join Appellants as an Intervenor in this case. It is the only school district that is a party to this suit; although, all other school districts in the United States are affected by the provisions of the 1966 Amendment to the Fair Labor Standards Act. Thus, Fort Worth is representative of all other school

districts in the United States. We shall limit this Brief to an objective analysis:

(1) of the Texas Statutes which govern Texas schools, and

(2) of the application of the 1966 Act as applied to the Fort Worth public free schools.

Briefs have been filed by the Attorney Generals of Maryland and Texas on behalf of all Appellants, including the Fort Worth Independent School District, wherein there will be found a complete list of all of the authorities on all of the questions presented by this appeal. We shall not burden the Court with a repetition of citation of the same authorities.

ESTABLISHMENT OF PUBLIC FREE SCHOOLS

The Constitution of Texas enjoined the Legislature to establish and maintain an efficient system of public free schools, Article 7, Section 1 (App.A., p.1a).

The Constitution of Texas provides for the sources of revenue to finance the public free schools, Article 7, Section 3 (App.A, pp.1a and 2a).

The Legislature authorizes the local school districts to levy, assess and collect taxes to finance the local schools, Articles 2784e and 2784e-1, and Article 2799, V.A.C.S. (App.A, pp.3a, 4a and 5a).

The Legislature limits the purposes for which the public free school funds may be expended, Article 2827, V.A.C.S. (App.A, pp.5a and 6a).

Article 2902, V.A.C.S. (App.A, p.6a) provides in

part:

> "* * * The board of school trustees * * * shall admit to the benefits of the public schools any person over six and not over twenty-one years old at the beginning of the scholastic year, * * *"

Article 2922-11, V.A.C.S. (App.A, p.7a) provides:

> "This Act shall be known as the Foundation School Program Act. It is the purpose of this Act to guarantee to each child of school age in Texas the availability of a minimum Foundation School Program for nine (9) full months of the year, and to establish the eligibility requirements applicable to Texas public school districts in connection therewith."

STATE TAX

The method of providing for the levying and collecting of the State ad valorem tax for public free school purposes is set forth in Article 7041, V.A.C.S. (App.A, p.7a).

LOCAL TAX

The Act Creating the Fort Worth Independent School District (Local and Special Laws of Texas of 1925, p. 674, ch. 230; App.A, pp.7a, 8a, 9a and 10a) authorizes the board of trustees to invoke the provisions of the State law for the purpose of assessing and collecting school taxes for the school district.

In Appendix A, pp. 1a, 2a, 3a, 4a and 5a we have set forth in detail both the constitutional and statutory provisions relating to the methods of imposing taxes

for the support of the public free schools. The local school district can only levy, assess and collect a tax on the ad valorem property located in the district after an election has been held for a specific purpose.

NINE SCHOLASTIC MONTHS EACH YEAR

Section 12 of the Act Creating the Fort Worth Independent School District (App.A, p.8a) provides in part:

> "* * * The board shall establish, manage and control all public free schools within said district, and shall provide for maintaining and operating same for at least nine (9) scholastic months in each year, * * *"

This is the same as the State law requirement, Article 2922-11, V.A.C.S. (App.A, p.7a) paragraph (2) below.

STATUTORY REQUIREMENTS

(1) The benefits of the public free schools shall be available to any person over six and not over twenty-one years of age, Article 2902, V.A.C.S. (App.A, p.6a).

(2) The Foundation School Program Act, Article 2922-11, V.A.C.S. (App.A, p.7a) provides that every school must operate for nine full months of each year. The requirements of this law have in fact been carried into execution by the Texas Education Agency.

(3) The Legislature has by law required Fort Worth to maintain and operate the public free schools within said district for at least nine (9) scholastic

months in each year, Section 12, Special Act of 1925 Creating the Fort Worth Independent School District (Local and Special Laws of Texas of 1925, p. 674, ch. 230; App.A, p.8a).

(4) The State of Texas levies and collects taxes for the payment of a part of the cost of operating the public free schools in the State, Texas Constitution, Article 7, Section 1, (App.A, p.1a).

(5) Each local school district imposes an ad valorem tax for the maintenance and operation of the local schools, Articles 2784e and 2784e-1 and Article 2799, V.A.C.S. (App.A, pp.3a, 4a and 5a).

The continued existence and operation of the local school district is dependent upon compliance with the constitutional and statutory requirements of the State. As pointed out in the above statute the local district cannot impose a tax greater than $1.50 on the $100.00 valuation. Out of 1303 school districts in this State probably one-half of them, or more, have already reached this limit. They cannot, under the statutes of Texas, impose additional tax to carry out the congressional mandates of the Act nor for any other purpose. We submit that this is a serious matter and is not a subject to be lightly disregarded as was done by the majority of the Three Judge Court.

AN ANALYSIS OF THE STATEMENT OF EUGENE HIGHTOWER, BUSINESS MANAGER, FORT WORTH INDEPENDENT SCHOOL DISTRICT

Appendix B is an accurate reproduction of the Statement of Mr. Eugene Hightower, the Business

Manager of the Fort Worth Independent School District, which Statement was included in the Stipulation of counsel in the Trial Court. We shall briefly analyze this Statement.

On pp. 11a and 12a, Paragraph A of Appendix B entitled "Organization" Mr. Hightower points out that the trustees are charged with the responsibility of assessing, levying and collecting ad valorem taxes on the property owners in the district, together with other information concerning the number of students, the number of teachers and the number of other employees.

On pp. 12a and 13a, Paragraph B of Appendix B, entitled "Revenues" Mr. Hightower points out a most significant fact and we quote therefrom as follows:

> "The revenues for operating the School District are limited to the following sources:
>
> (1) The State and county available funds, approximately 49% - 50%
>
> (2) Local school funds from district taxes, approximately 46% - 49%
>
> (3) Grants from the Federal Government, approximately 1% - 4%.
>
> The Federal Grants are by operation of grace and subject to being withdrawn or withheld at the pleasure of the Federal Government. The State derives its revenues from taxes. The local district derives its revenues from an ad valorem tax on the property owners within the district. The Texas Law, Article 2827, V.A.C.S., limits the purpose for which tax funds may be expended. In order for the District to comply with the re-

quirements of the Fair Labor Standards Amendment of 1966 the District will be required to assess, levy and collect additional ad valorem taxes on the property owners owning property within the District. The Federal Government is thus imposing indirectly a tax on the property owners in the District.

* * *"

On p.13a, Paragraph C of Appendix B, entitled "Wages and Hours" Mr. Hightower has computed the additional cost as required by the provisions of the 1966 Amendment to the Fair Labor Standards Act, namely:

"No employee of the District is paid less than $1.00 per hour. A computation of the additional cost to the District as exacted by the terms of the Act relating to overtime is set forth as follows:

February 1, 1967-February 1, 1968	$186,866.80
February 1, 1968-February 1, 1969	318,608.40
February 1, 1969-February 1, 1970	450,350.00
February 1, 1970-February 1, 1971	512,750.00
February 1, 1971-	575,150.00

* * *

There is no other source from which the above additional cost of operation can be obtained other than the assessing, levying and increase of the ad valorem tax on the property owners within the District."

On pp. 13a and 14a, Paragraph D of Appendix B entitled "Employees Affected" Mr. Hightower points out that 1490 employees will be affected by the Act, all of whom are now under contract and are perma-

nently employed. He points out in great detail the benefits that the contractual employees receive and that if the Act goes into effect this status will be changed, and they will become hourly employees.

We pause to observe that the local board of trustees, the administrative staff and the employees affected, over a period of years, have established a system that has proven to be advantageous and satisfactory both to the schools and to the employees. This group does not share the apparent philosophy of the Congress that the employees should be changed from their present status to hourly workers. We are prepared to believe that the local boards of education of all the school districts in the country and the local employees affected by the Wage and Hour Act feel that the Congress should not substitute its judgment for that of the local boards and the employees. To do so would in effect make the Congress the school board for the country. That authority has not been given to the Congress by the U. S. Constitution.

On Page 15a of Appendix B, Paragraph E entitled "Job Description" Mr. Hightower sets forth in great detail the summary of the job descriptions of the employees affected by the Act in which he pointed out that the employees individually and collectively are engaged in activities that are local in nature and that no goods or merchandise is made, manufactured, sold, transferred or placed in commerce.

An interesting part of Mr. Hightower's Statement is found on pp. 15a and 16a, Paragraph F entitled

"Budget and Expenditures" in which he points out that an audit shows that 98.9744 per cent of the budget was spent in Intrastate Commerce and that 01.0256 per cent was spent in Interstate Commerce.

PERPLEXING PROBLEM

The Texas Law and the Statement of Mr. Hightower leave in no doubt that the only three sources of revenue to pay the costs of operating a local school system are from (1) the State (2) the local district, and (3) grants from the Federal Government. The local district has no control over items (1) nor (3). The local district can and does depend upon the State for approximately one-half of the total cost of operating the system. The amount of the grants from the Federal Government vary from 1 per cent to 4 per cent depending upon the pleasure of the Congress and the directives of the federal administrator. The local district has no assurance that it will receive any sum whatever from this source. We repeat this is a matter of grace. Therefore, the only source of additional revenue to defray the added cost as required by the Act would be for the local district to comply with the State law and the Law creating the district, namely: (a) to call an election for the purpose of levying, assessing and collecting additional ad valorem taxes on the owners of real property in the district, (b) that the eligible voters in the district by a majority vote must approve such additional tax. We are not prepared to suggest the consequences that would result if a majority of the voters should register their vote in the negative. For emphasis we repeat, there is no

other way for the Fort Worth Independent School District to raise the money to comply with the requirements of the Act. It is no answer to say, as was done by the Three Judge Court, that the school district would have to make its own arrangements. There are no other arrangements to be made. Furthermore, the maximum rate for all school districts in the State is fixed by Articles 2784e and 2784e-1, V.A.C.S. (App.A, pp. 3a and 4a). Most of the schools in this State have already voted the maximum rate. Thus, no additional tax can be voted. Furthermore, the State law requires that the schools must be operated for at least nine scholastic months each year and this means a minimum of 180 school days. Thus, it is no answer, as was suggested in the Opinion of Circuit Judge Winter, that the term of the schools could be for a lesser period of days. We respectfully urge that the Congress and the Federal Courts are without authority to substitute their notions of policy for that of the Legislature of the State and the local school authorities, and that is exactly what the Congress and Circuit Judge Winter are attempting to do.

TENTH AMENDMENT

The Law Creating the Fort Worth Independent School District makes it an agency and instrumentality of the State. Thus, it is our position that the Tenth Amendment applies.

INTERSTATE COMMERCE

The Briefs by the Attorney Generals of Maryland and Texas on behalf of all the Appellants in this case,

discuss at length the reasons why the schools are not engaged in Interstate Commerce. This contention finds support in the Statement of Mr. Hightower that 98.9744 per cent of all merchandise bought in Fort Worth is Intrastate and 01.0256 per cent is Interstate (App.B, p.16a).

The public free schools are operated for the sole purpose of educating children. The compensation paid to the superintendent, the teacher, the janitor or any other employee is only a means to accomplish such purpose.

CONTROLLING POINT

Thus, we reach the controlling and ultimate point for decision by this Court so far as local school districts are concerned, namely: does the Congress have authority under the Constitution of the United States to levy, assess and collect a tax on the Fort Worth Independent School District? If the Congress should attempt to impose a direct tax on the local school district, we ask wherein would it find its authority and what method would be employed by the Congress to levy, assess and collect such tax? The answer to this question we feel is elementary and fundamental and certainly the Congress does not have any such authority to impose a direct tax. It follows that if the Congress does not have authority to impose a tax directly, it cannot impose the same tax indirectly. We submit that the Congress does not have authority to require a local school district to levy, assess and collect a tax to carry into execution the requirements that the

Congress did not have authority to make in the first place. We find no such authority in Article 1, Section 8, Clause 1 of the U.S. Constitution, (App.A, p.1a).

The Congress is without authority to establish itself as the school board for the country. This Court should so hold.

CONCLUSION

Since the Congress is without authority under the U.S. Constitution to impose a direct tax on a local school district it, likewise, is without authority to impose such a tax indirectly. Thus, we call on this Court to hold unconstitutional the 1966 Amendment to the Fair Labor Standards Act.

Respectfully Submitted,

Cecil A. Morgan
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CERTIFICATE

A copy of this Brief has been mailed to the following: (1) Honorable Francis B. Burch, Attorney General of Maryland (2) Honorable Crawford C. Martin, Attorney General of Texas, (3) Erwin S. Griswold, Esquire, Solicitor General, on this 26th day of February, 1968.

Cecil A. Morgan

APPENDIX A

Constitutional Provisions and Statutes Involved
U. S. Constitution, Article 1, Section 8, Clause 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

U. S. Constitution, Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Texas Constitution, Article 7, Section 1

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Texas Constitution, Article 7, Section 3

One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed

thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public schools or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one ($1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law. As amended Aug. 14, 1883, proclama-

tion Sept. 25, 1883; Nov. 6, 1908, proclamation Feb. 2, 1909; Aug. 3, 1909, proclamation Sept. 24, 1909; Nov. 5, 1918; Nov. 2, 1920; Nov. 2, 1926, proclamation Jan. 20, 1927.

Vernon's Texas Civil Statutes, Article 2784e
Paragraphs 1, 3, and 4

Taxing Power. The Commissioners Court for the common school districts in its county, and the district school trustees for the independent school districts incorporated for school purposes only, and trustees of rural high school districts and the trustees of all other school districts shall have power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized, subject to the following provisions:

1. In common school districts, for the further maintenance of public free schools and the erection and equipment of school buildings therein, a special tax; and in independent districts, rural high school districts and all other school districts for the maintenance of schools therein, an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property of the district.

* * *

3. The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

4. No tax shall be levied, collected, abrogated, diminished or increased, and no bonds shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district shall be entitled to vote.

* * *

Acts 1945, 49th Leg., p. 488, ch. 304, § 1; Acts 1947, 50th Leg., p. 534, ch. 314, § 1.

Vernon's Texas Civil Statutes, Article 2784e-1, Section 1 and Paragraph 3

Section 1. The Commissioners Court for the common school districts in its county, and trustees of rural high school districts, and trustees of all other school districts, shall have the power to levy and cause to be collected the annual taxes and to issue the bond herein authorized, subject to the following provisions:

* * *

3. No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district, whose property has been duly rendered for taxation, shall be entitled to vote.

* * *

Acts 1955, 54th Leg., p. 1635, ch. 528; Acts 1957, 55th Leg., p. 167, ch. 74, § 1.

Vernon's Texas Civil Statutes, Article 2799

The governing body of any city or town which is a separate and independent school district, whether in-

corporated under any act of the Congress of the Republic or the Legislature of Texas, or under any act or incorporation whatever, shall have power by ordinance to annually levy and collect ad valorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town. The proposition submitted may be for such a rate of ad valorem tax not exceeding such per cent. as may be voted by a majority vote of all votes cast in any such election. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued at the request of fifty property taxpayers of such independent district. When the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year. Acts 1905, p. 263; Acts 1917, p. 380.

Vernon's Texas Civil Statutes, Article 2827, Paragraphs 1 and 2

The public free school funds shall not be expended except for the following purposes:

1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein.

* * *

Acts 1905, p. 263; Acts 1919, p. 189; Acts 1934, 43rd Leg., 4th C.S., p. 34, ch. 9, § 1.

Vernon's Texas Civil Statutes, Article 2902

All children, without regard to color, over six years of age and under eighteen years of age at the beginning of any scholastic year, shall be included in the scholastic census and shall be entitled to the benefit of the public school fund for that year. The board of school trustees of any city or town or independent or common school district shall admit to the benefits of the public schools any person over six and not over twenty-one years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said city, town or district. Acts 1905, p. 263; Acts 1913, p. 175; Acts 1915, p. 183; Acts 1929, 41st Leg., p. 232, ch. 97.

Vernon's Texas Civil Statutes, Article 2922-11

This Act shall be known as the Foundation School Program Act. It is the purpose of this Act to guarantee to each child of school age in Texas the availability of a minimum Foundation School Program for nine (9) full months of the year, and to establish the eligibility requirements applicable to Texas public school districts in connection therewith. Acts 1949, 51st Leg., p. 625, ch. 334, art. 1, § 1.

Vernon's Texas Civil Statutes, Article 7041

The Governor, Comptroller and State Treasurer are constituted a board to calculate the ad valorem tax to be levied and collected each year for State and public free school purposes. Acts 1907, p. 464.

Special Act of 1925 Creating the Fort Worth Independent School District

(Local and Special Laws of Texas of 1925, page 674, chapter 230)

Section 1. Created the Fort Worth Independent School District and severed the connection theretofore existing between the public school system and the municipal corporation known as the City of Fort Worth. However, provision was made in subsequent parts of this Special Act for the assessment and collection of school taxes by the Tax Assessor and Collector of the City of Fort Worth.

* * *

Section 6. From and after the passage of this Act, the Fort Worth Independent School District shall be under the management and control of seven trustees, to be collectively known as the board of education of the Fort Worth Independent School District. The

members of said board of education, now known as the board of trustees of the independent school district of Fort Worth, as at present constituted, shall, however, continue in office, execute and perform the duties and powers herein conferred upon the board of education until the enacting and taking effect of this Act, and until their successors as herein provided for shall have been selected and qualified, as hereinafter provided.

Section 7. The members of said board of education shall be elected at large in said district by the qualified voters thereof, and which said board shall collectively be known and designated as the board of education of the Fort Worth Independent School District, said trustees, in order to be eligible to office must have been freeholders in said district for at least one year, and qualified voters of said district for a period of three years, and in addition thereto, shall be persons of good moral character, and possessed of at least a grammar school education.

* * *

Section 12. (a) The members of said board shall serve without compensation. The board shall establish, manage and control all public free schools within said district, and shall provide for maintaining and operating same for at least nine (9) scholastic months in each year, and shall have the management and control of all properties of said corporation, and shall in all matters act for said corporation. Said board shall have power to purchase or lease suitable grounds upon which to erect school buildings and play grounds necessary for said schools, and to construct and equip said school buildings and play grounds within said district; and shall provide for the maintaining and keeping in repair of school buildings, appurtenances, furniture apparatus and appendages used for public school purposes within said district, and for keeping

said buildings, grounds, and their property, in good order and in good sanitary condition. The board may establish schools within said district for the teaching and instruction of pupils in special subjects, as it from time to time may consider advisable.

(b) The board shall have the power to prescribe the qualifications to be required of teachers that may be employed in such schools, and to issue certificates to such teachers, and to fix a schedule of salaries for all teachers employed by said board; provided the qualifications required shall never be under those required by General Law.

(c) The board shall have the exclusive authority to recognize and validate teachers' certificates and diplomas issued by other schools, towns, cities or states; provided no certificates or diplomas shall be recognized or validated unless up to the standard required by General Law.

(d) Said board shall appoint and employ a superintendent of schools. Said appointment to be made at the first regular meeting in March, or as soon thereafter as practicable, and such employment may be for a period of two years or longer as provided by General Law, and in the event of a vacancy in said office, the board shall appoint a successor thereto at the earliest convenient opportunity.

(e) It shall be the duty of the superintendent of schools annually, before the first day of July of each year, to prepare a comprehensive plan of the organization of the school system for the ensuing school year, and submit the same to the board for approval.

* * *

(l) For the purpose of carrying out the powers and authority herein conferred upon said board, ex-

press power is hereby conferred upon the board of education to levy and collect taxes upon all property taxable within said district, and this power to levy and collect taxes is subject to the limitation herein set forth.

(o) The board of education shall have the power to enforce the attendance at such schools of any and all children who reside within said Fort Worth Independent School District, within the scholastic age, now or hereafter approved by General Law, * * *.

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. 18,005

STATE OF MARYLAND, ET AL, Plaintiffs

vs.

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, ET AL, Defendants

STATEMENT OF EUGENE HIGHTOWER, BUSINESS MANAGER, FORT WORTH INDEPENDENT SCHOOL DISTRICT

The Fort Worth Independent School District, Fort Worth, Texas. Eugene Hightower, Business Manager for the Fort Worth Independent School District, if placed under oath would testify as follows concerning the operation of the District:

A. *Organization.* The organization of the Fort Worth Independent School District is similar to that of the other 1303 districts in the State, namely, it is governed by a local board of trustees elected by the people living within the district. The board is charged with the responsibility of:

(1) fixing policies

(2) selecting all employees

(3) assessing, levying and collecting ad valorem taxes on the property owners in the district

(4) providing an educational system free of cost for all children between the ages of 6 and 18 who reside in the district.

The Fort Worth District has:

(1) 80,000 students enrolled

(2) 3569 on the administrative and teaching staff

(3) 1490 additional employees

B. *Revenues.* The revenues for operating the School District are limited to the following sources:

(1) The State and county available funds, approximately 49% - 50%

(2) Local school funds from district taxes, approximately 46% - 49%

(3) Grants from the Federal Government, approximately 1% - 4%.

The Federal Grants are by operation of grace and subject to being withdrawn or withheld at the pleasure of the Federal Government. The State derives its revenues from taxes. The local district derives its revenues from an ad valorem tax on the property owners within the district. The Texas Law, Article 2827, V.A.C.S., limits the purpose for which tax funds may be expended.

In order for the District to comply with the requirements of the Fair Labor Standards Amendment of 1966 the District will be required to assess, levy and collect additional ad valorem taxes on the property owners owning property within the District. The Federal Government is thus imposing indirectly a tax on the property owners in the District.

At the present time there are 7 governmental agencies which impose an ad valorem tax on the property owners who own property in the Fort Worth Independent School District. The name of each agency and the tax rate per $100.00 taxable valuation is set forth

as follows, to-wit:

Junior College	$ .27
Water Improvement District	.24
Hospital District	.52
County	.82
State	.71
City	1.73
School District	1.59

C. *Wages and Hours.* No employee of the District is paid less than $1.00 per hour. A computation of the additional cost to the District as exacted by the terms of the Act relating to overtime is set forth as follows:

February 1, 1967-February 1, 1968	$186,866.80
February 1, 1968-February 1, 1969	318,608.40
February 1, 1969-February 1, 1970	450,350.00
February 1, 1970-February 1, 1971	512,750.00
February 1, 1971-	575,150.00

There is no other source from which the above additional cost of operation can be obtained other than the assessing, levying and increase of the ad valorem tax on the property owners within the District.

D. *Employees Affected.* The Act includes all non-teaching personnel. In the Fort Worth District this classification includes 1490 employees, most of whom have been with the District for many years, all of whom are under contract and both the employee and the District consider that the employee is permanently employed and that he or she is engaged in this work as a career or a profession. As such, each of said employees have in addition to their regular annual

salary the following benefits:

Career Employees by Catagories and Benefits:

Employees	*Catagories*
282	clerical*
360	custodians
197	maids
89	maintenance
562	cafeteria
1490 . . . Total	

Career people are employed under a yearly contract, on a guaranteed salary, with the following benefits.

1. Retirement**—state plan for auxiliary employees
2. Terminal pay
3. Vacation—two weeks***
4. Holidays—approximately 15 days per year
5. Sick leave—10 days per year at full pay, 10 days at half pay, cumulative to 80 days
6. Death in family—one to five days off
7. Personal Business—two days per year, less substitute pay
8. Life Insurance—$1,000.00 paid by district
9. Life Insurance—low group rate paid by employee
10. Insurance — income protection — group plan paid by employee
11. Hospitalization Insurance — low group rate paid by employee

*Work week for clerical employees is reduced from 8 hours to 7 hours during June, July, August

**Retirement for clerical workers based on teacher retirement schedule

***Head custodians and maintenance employees receive an extra week vacation in lieu of extra pay for overtime work.

The change from the present system to a compliance with the requirements of the Act would destroy or at least materially modify the existing contractual relationship between the District and its employees. The employee's status would be reduced from a profession to a wage earner.

E. *Job Description.* A job description of the work required and performed by each and every employee, non-teaching personnel, has been compiled, marked Exhibit 5, attached to and made a part of this Statement. A summary of job descriptions, salary schedules and hours of normal work weeks on non-teaching personnel has been set forth in Exhibit 6, attached hereto and made a part hereof.

Based upon the factual data set forth in Exhibits 5 and 6, an analysis reveals:

(1) These Exhibits set forth accurately, objectively and in detail the work that is required and the work that is performed by every employee in the District in the non-teaching personnel.

(2) The job requirements of each employee are limited to the operation of the local school.

(3) All services rendered by every employee are limited to the activities within the District.

(4) The employees, individually and collectively, are engaged in activities that are local in nature.

(5) No goods nor merchandise is made, manufactured or in any manner sold, transferred or placed in commerce. To illustrate, the engineer heats and cools the building. The maid keeps the building clean.

F. *Budget and Expenditures.* The annual operating budget for the school year 1965-66 was $34,317,752.78. An audit has been made of each and every purchase

for merchandise or supplies of every kind and character as set forth in Exhibit 7, attached to and made a part hereof. This audit accurately reveals every expenditure made in every transaction of both Intrastate and Interstate. It further reveals every expenditure for services rendered and supplies purchased. In the event of doubt concerning any item, it was classified as Interstate as shown by Exhibit 7a, attached hereto and made a part hereof. The following items were classified as Interstate transactions:

(1) All supplies and materials that were purchased direct from an out of State supplier.

(2) All supplies and materials which were paid for by a check sent out of State although the negotiations for the supplies were made by a local merchant in Fort Worth.

This audit shows that 98.9744 per cent of the budget was spent Intrastate, that is, for services rendered or materials supplied in Fort Worth. The remaining 01.0256 per cent of the budget was spent for materials supplied from merchants outside of the State of Texas.

The District uses or consumes all supplies and materials purchased.

I certify that the above Statement is true and correct to the best of my knowledge.

EXECUTED at Fort Worth, Texas, this 16th day of February, A. D. 1967.

/s/ Eugene Hightower, Business Manager, Fort Worth Independent School District.